

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**CHRISTIE R. COLEMAN**  
Claimant

VS.

**ARMOUR SWIFT-ECKRICH**  
Respondent  
Self-Insured

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Docket No. 1,007,851

**ORDER**

This matter is before the Workers Compensation Board (Board) on remand from the Kansas Supreme Court. The Supreme Court opinion was filed March 24, 2006. The matter was originally decided by the Board in its Order of March 31, 2005. At that time, the Board, in following the general rule in Kansas, denied claimant compensation for an injury on November 6, 2001. Claimant was injured when, while waiting for a meeting, she was dumped from a chair in which she was sitting. The Board held that the general rule in Kansas was to deny compensation to an employee, injured by horseplay, whether the employee was a willing participant or not.

**APPEARANCES**

Claimant appeared by her attorney, Jeff K. Cooper of Topeka, Kansas. Respondent, a self-insured, appeared by its attorney, Mark E. Kolich of Lenexa, Kansas.

**RECORD AND STIPULATIONS**

The Board has considered the record and stipulations as set forth in its original Order of March 31, 2005, together with the March 24, 2006 opinion of the Kansas Supreme Court.

**ISSUES**

What is the nature and extent of Claimant's injury?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter was originally before the Board upon claimant's appeal of the August 24, 2004 Award of Administrative Law Judge Bryce D. Benedict. Claimant was denied benefits after the Administrative Law Judge (ALJ) and the Board determined that claimant's injury did not arise out of and in the course of her employment, as it was the result of horseplay. Claimant argued that she was a non-willing participant in the horseplay and should, therefore, be compensated for her injuries. The ALJ and the Board found claimant's injuries to be non-compensable, as the general law in Kansas was that injuries incurring during horseplay did not arise out of the employment unless it is shown that the horseplay had become a regular incident of the employment. The Kansas Supreme Court had held that whether the injured employee was a willing participant or a non-participant was irrelevant under the then majority rule.<sup>1</sup>

The Kansas Supreme Court, in its opinion of March 24, 2006, ruled that the long-standing rule utilized in Kansas, denying compensation to nonparticipating victims of horseplay, was no longer the majority rule, but was, instead, the minority rule, which the court described as "an anachronism".<sup>2</sup>

The court, citing Larson's Workers' Compensation Law, held:

It is now clearly established that the nonparticipating victim of horseplay may recover compensation. The modern observer may find it hard to believe that such claims were uniformly denied in early compensation law.<sup>3</sup>

The court, in a well reasoned opinion, stated:

Courts of last resort, such as this one, are not inexorably bound by their own precedents. They follow the rule of law established in earlier cases unless clearly convinced that the rule was originally erroneous or is no longer sound. *State v Marsh*, 278 Kan. 520, Syl. ¶ 23, 102 P. 3d 445 (2004). We are clearly convinced

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<sup>1</sup> *Stuart v. Kansas City*, 102 Kan. 307, 171 Pac. 913 (1918).

<sup>2</sup> *Coleman v. Armour Swift Eckrich*, 130 P.3d 111, \_\_\_ Kan. \_\_\_ (2006).

<sup>3</sup> *Id.* at 115, citing 2 Larson's Workers' Compensation Law § 23.02, 23-2 (1999).

here that our old rule should be abandoned. Although appropriate for the time in which it arose, we are persuaded by the overwhelming weight of contrary authority in our sister states and current legal commentary.<sup>4</sup>

The Board's decision to deny claimant benefits was reversed and the matter remanded for further proceedings consistent with the court's opinion.

The parties have stipulated that claimant's award should be limited to a 5 percent whole body functional disability, as claimant has returned to her employment with respondent at a comparable wage.<sup>5</sup> The Board, in following the instructions of the Kansas Supreme Court and pursuant to the stipulation of the parties, finds that claimant is entitled to a 5 percent whole person permanent partial disability on a functional basis.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that an Award is granted in favor of the claimant, Christie R. Coleman, and against the respondent, Armour Swift-Eckrich, a self-insured, for an accidental injury which occurred on November 6, 2001, and based upon an average weekly wage of \$448.29, for 20.75 weeks of permanent partial disability compensation at the rate of \$298.88 per week totaling \$6,201.76.

As of the date of this Award, the entire amount is due and owing and ordered paid in one lump sum, minus any amounts previously paid.

Claimant is entitled to all of her outstanding and unauthorized medical, up to the statutory limit. Future medical will be considered upon application to and approval by the Director.

**IT IS SO ORDERED.**

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<sup>4</sup> *Id.* at 116.

<sup>5</sup> K.S.A. 44-510e.

Dated this \_\_\_\_ day of May, 2006.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant  
Mark E. Kolich, Attorney for Respondent  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director